

**Comments on the “Task Force on Improving the National Environmental Policy Act and
Task Force on Updating the National Environmental Policy Act
Committee on Resources
United States House of Representatives
Initial Findings and Draft Recommendations
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Comments on the Report
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Report recommendations and Tribal response:

General Comments:

The National Environmental Policy Act does not need changing. The Report proposes making several changes to NEPA legislation. If any changes to the implementation of NEPA are made, they should be made by the Council on Environmental Quality utilizing the rule-making process.

There should be more emphasis on how tribes are impacted by NEPA in the overall recommendations. At this time, the Tribe recommends additional studies on these impacts.

One recommendation is for CEQ to work with all federal agencies in order to have one NEPA process and guidelines used for all tribal projects. That way, tribes would be able to do one set of NEPA documents for all federal agencies for each project.

Specific Comments on Report Recommendations:

- Group 1 – Addressing delays in the process:
 - 1.1 – Amend NEPA to define “major federal action”:
 - RESPONSE: If a definition is created for “major federal actions”, it should be done utilizing the rule-making process by the Council on Environmental Quality. This will allow for more frequent updates as circumstances change.
 - 1.2 – Amend NEPA to add mandatory timelines for the completion of NEPA documents:
 - RESPONSE: This recommendation should not be put in place because it is truly micromanaging inappropriately. Each project is different; resources to complete NEPA analysis are different for each project. To try to set a timeframe to complete NEPA analysis and place this in Federal legislation would make NEPA less effective.
 - 1.3 – Amend NEPA to create unambiguous criteria for the use of Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental

- Impact Statements (EIS):
 - RESPONSE: Again, if this is done, it should be accomplished by the Council on Environmental Quality in a rule-making process with a great deal of input from each Federal agency, tribes and others.
 - 1.4 – Amend NEPA to address supplemental NEPA documents:
 - RESPONSE: If this is done, it would limit challenges to inadequate analyses. If this is pursued, it should be done by the rule-making process by CEQ.
- Group 2 – Enhancing Public Participation:
 - 2.1 – Direct CEQ to prepare regulations giving weight to localized comments:
 - RESPONSE: This is inappropriate and a one-size fits all approach and should not be done. Some Federal actions may impact local people and places more than others. However, in a case where a national park or national forest is completing a NEPA document, the lands are held in trust for the entire population of the country. To give local people more say in decisions does not reflect the trust doctrine.
 - 2.2 – Amend NEPA to codify the EIS page limits set forth in 40 CFR 1502.7:
 - RESPONSE: Again, this is micromanaging the process. CEQ could work on this issue during a rule-making process. For instance, perhaps Executive Summaries could be developed for documents longer than 200 pages. To amend NEPA over this is unnecessary. This also contradicts the direction to give adequate analysis in NEPA documents.
- Group 3 – Better involvement for state, local and Tribal stakeholders:
 - 3.1 – Amend NEPA to grant Tribal, state and local stakeholders cooperating agency status:
 - RESPONSE: This should be handled in a CEQ rule-making process.
 - 3.2 - Direct CEQ to prepare regulations that allow existing state environmental review process to satisfy NEPA requirements:
 - RESPONSE: This should also include Tribal environmental review processes and should be addressed using a CEQ rule-making process.
- Group 4 – Addressing litigation issues:
 - 4.1 – Amend NEPA to create a citizen suit provision:
 - RESPONSE: This should not be done through an amendment to NEPA. If this is done, it should be done in a CEQ rule-making process.
 - 4.2 – Amend NEPA to add a requirement that agencies “pre clear” projects:
 - RESPONSE: This should be done using a CEQ rule-making process, not by amending NEPA.
- Group 5 – Clarifying alternatives analysis:
 - 5.1 – Amend NEPA to require that “reasonable alternatives” analyzed in NEPA documents be limited to those which are economically and technically feasible:
 - RESPONSE: This proposed recommendation should not be carried forward. This is another example of micromanagement and a one-size fits all approach that is inappropriate to mandate at a legislative level. This is already addressed in CEQ regulations and administrative and legal appeals processes. It is a very subjective call to make and it needs to be made on an individual basis as it is now.

- 5.2 – Amend NEPA to clarify that the alternatives analysis must include consideration of the environmental impact of not taking an action on any proposed project:
 - RESPONSE: This should already be taking place in the no-action alternative and analysis. If not, it should be addressed in a CEQ rule-making process.
 - 5.3 – Direct CEQ to promulgate regulations to make mitigation proposals mandatory:
 - RESPONSE: This is a good recommendation and should be supported.
- Group 6 – Better Federal Agency Coordination:
- 6.1 – Direct CEQ to promulgate regulations to encourage more consultation with stakeholders:
 - RESPONSE: A requirement for Tribal consultation is already a part of the NEPA regulations and tools such as Executive Orders. For tribes, this is unnecessary to require anything more unless a particular tribe has a consultation process that should be followed. This should be left between each tribe and the federal government.
- 6.2 – Amend NEPA to codify CEQ regulation 1501.5 regarding lead agencies:
 - RESPONSE: This should be accomplished in a CEQ rule-making process and not by amending NEPA.
- Group 7 – Additional authority for the Council on Environmental Quality:
- 7.1 – Amend NEPA to create a NEPA Ombudsman within the Council on Environmental Quality:
 - RESPONSE: This is a good recommendation.
- 7.2 – Direct CEQ to control NEPA related costs:
 - RESPONSE: This recommendation should not be carried forth. It is infeasible to create a one-size fits all approach to NEPA costs. This could be placed in section 9 and studied to determine additional recommendations.
- Group 8 – Clarify meaning of cumulative impacts:
- 8.1 – Amend NEPA to clarify how agencies would evaluate the effect of past actions for assessing cumulative impacts:
 - RESPONSE: This recommendation should not be implemented. Existing environmental conditions should not be the methodology for accounting for past actions. That is like starting with a clean slate after decades, if not hundreds of years, of actions have left their impacts.
- 8.2 – Direct CEQ to promulgate regulations to make clear which types of future actions are appropriate for consideration under the cumulative impact analysis:
 - RESPONSE: This recommendation should not be implemented. It narrows the definition of future actions too much and does not take into account trend analysis. It really guts the purpose of looking at future actions.
- Group 9 – Studies:
- 9.1 - CEQ study of NEPA's interaction with other Federal environmental laws:
 - RESPONSE: This is a good recommendation but should give CEQ longer to do the study; at least 2 years.
- 9.2 – CEQ study of current Federal agency NEPA staffing issues
 - RESPONSE: This is a good recommendation but should give CEQ longer to do the study; at least 2 years.

- 9.3 – CEQ study of NEPA’s interaction with state “mini NEPAs” and similar laws
 - RESPONSE: This study should also include Tribal environmental policy acts and CEQ should be given at least 3 years to complete this study.